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Symposium Issue: Lawyering for a New Democracy

CURRENT ISSUES IN THE CHANGING ROLES AND PRACTICES OF COMMUNITY
ECONOMIC DEVELOPMENT LAWYERS

Susan R. Jones¹

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Introduction

This Article explores current issues related to the changing roles of public interest lawyers engaged in Community Economic Development (CED)² in a new democracy. The concept of a new democracy emanates from a reevaluation of the meaning of democracy, promoting human interests and ideals of social equality, and economic participation. Public interest law is changing as a vehicle for promoting social and economic justice in this age of information, globalization, and high technology. Consistent with public demand, societal evolution, and changes in the legal profession, today's public interest lawyers assume a much greater variety of roles and tasks.³ These roles and tasks require knowledge of business, finance, environmental studies, real estate, architecture, public policy, education, employment and human resources, community organizing, organizational development, change theory, etc. One example of the various skills required in legal practice in the twenty-first century is the ethical dialogue about

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² Not all CED lawyers are public interest lawyers. CED lawyers exemplify a full range of lawyering types from regnant, facilitative to collaborative, community and progressive. For purposes of this Article, I assume that CED lawyers are progressive, collaborative, community lawyers. See generally Gerald P. López, *Rebellious Lawyering: One Chicano's Vision of Progressive Law Practice* (1992); Susan Bryant, *Collaboration in Law Practice: A Satisfying and Productive Process for a Diverse Profession*, 17 Vt. L. Rev. 459 (1993); Michael Diamond, *Community Lawyering: Revisiting the Old Neighborhood*, 32 Colum. Hum. Rts. L. Rev. 67 (2000) (advancing a more activist role for lawyers working with community groups to increase long-term political power); Susan R. Jones, *Small Business and Community Economic Development: Transactional Lawyering for Social Change and Economic Justice*, 4 Clinical L. Rev. 195 (1997); Richard D. Marsico, *Working for Social Change and Preserving Client Autonomy: Is There a Role for "Facilitative" Lawyering?*, 1 Clinical L. Rev. 639 (1995).

³ Tia Breakley, Note, *Multidisciplinary Practices: Lawyers & Accountants Under One Roof?*, 2000 Colum. Bus. L. Rev. 275, 275-76.

multidisciplinary practice (MDPs), combinations of law and accounting firms serving large corporations.⁴

Another factor influencing the change in CED public interest lawyering is privatization of government, “defined as an increased reliance on the private institutions of society to satisfy public needs.”⁵ The reality of privatization and its impact on legal institutions is beginning to be explored in legal literature.⁶ Scholars assert that an analysis of the impact of privatization on clients and legal institutions “requires reimagining the role of the public interest advocate and adopting new strategies to foster transparency and participation in the changed regulatory environment.”⁷ A primary critique about privatized government is that it is less transparent and participatory than traditional governance and perhaps, less accountable to constituencies being serviced by the public as a whole.

While the transparency critique is true in many areas of public interest practice—for example welfare and social security—CED is an inherently privatized practice. It necessarily requires alliances between public and private actors. Indeed, the history of Empowerment Zones and Enterprise Communities, competitively chosen geographic areas that receive special federal attention to alleviate poverty and economic distress, is premised on attracting private enterprise in areas where previous government programs such as Model Cities have failed.⁸ The most recent CED initiative, the New Markets Tax Credit (NMTC), also seeks to learn from the past by reframing public-private alliances facilitated through a range of actors.⁹ Like the debate on MDPs, the assessment of the NMTC also facilitates “reimagining” the public advocate's role. In addition, the advent of NMTCs creates another opportunity to reimagine the meaning of development.¹⁰

⁴ *Id.* MDPs are entities engaging in a variety of professional services where at least one of them is engaged in law practice. *Id.* They are often a combination of law and accounting firms. *Id.* MDPs have been allowed in parts of Europe for many years but are restricted in most U.S. states and Canada where there is a ban on MDP fee-sharing between lawyers and nonlawyers. *Id.*

⁵ Louise G. Trubek, *Old Wine in New Bottles: Public Interest Lawyering in an Era of Privatization*, 28 Fordham Urb. L.J. 1739 (2001), available at <http://www.law.wisc.edu/conferences/lawyering/AdvanceReading/OldWine31901.doc>.

⁶ William H. Simon, *The Community Economic Development Movement: Law, Business and the New Social Policy* (2001); Scott L. Cummings, *Community Economic Development As Progressive Politics: Toward a Grassroots Movement for Economic Justice*, 54 Stan. L. Rev. 399, 402-03 (2001); Audrey G. McFarlane, *Race, Space, and Place: The Geography of Economic Development*, 36 San Diego L. Rev. 295, 321-26 (1999); Peter W. Salsich, Jr., *Solutions to the Affordable Housing Crisis: Perspectives on Privatization*, 28 J. Marshall L. Rev. 263 (1995), Trubek, *supra* note 4.

⁷ Trubek, *supra* note 4, at 1740.

⁸ McFarlane, *supra* note 5, at 321-26 (urging an examination of the accepted legal norms and processes for development).

⁹ Dimitri Pappas, *A New Approach to a Familiar Problem: The New Market Tax Credit*, 10 J. Affordable Housing & Community Dev. L. 323, 323 (2001).

¹⁰ *Id.* at 328-29.

Part I of this Article reviews briefly the background and context of CED as part of traditional public interest law. Part II examines significant changes in public interest lawyering while exploring aspects of the CED experience, such as funding trends for nonprofit organizations influenced by new economy principles of social venture philanthropy, social entrepreneurship, and social purpose business. This Section also examines the wide array of legal services needed to support enhanced strategic collaborations--a hallmark of today's CED practice--and the implications for CED lawyering anticipated by multidisciplinary practice. Part III provides lessons from law school clinical practice of enhanced strategic collaborations and highlights current trends and issues involving technology, leadership development, community organizing, asset accumulation, and social capital. Part IV concludes that there is an enhanced role for CED activist lawyers to play in the social, political, and economic dimensions of community revitalization.

I. Traditional Public Interest Law: Background and CED Context

Prior to privatization, lawyers viewed public interest practice as “asserting a voice for individuals and groups whose interests were ignored because of their inability to organize and obtain resources to counterbalance more powerful parties advocating before agencies.”¹¹ Welfare rights advocacy during the Johnson Administration's War on Poverty in the 1960s is a prime early example. Other examples, including immigration and domestic violence defense and legislative advocacy, emerged later. Public interest lawyers hoping to advance a fairer process critiqued the agency system as “hierarchical, unresponsive, and unbalanced.”¹² They helped to contribute to privatization by “undermin[ing] the public perception of government as the solution to all social problems, thereby contributing toward privatization.”¹³ Although once confined to more technical services such as trash collection and data processing, privatization, especially the contracting out of government services, has now been extended to human services, such as prisons and mental health. Scholars caution that unregulated capitalism and devolution pose serious threats to social order.¹⁴ At the same time, decentralization presents opportunities for new social movement ideologies.¹⁵

To examine privatization in a CED context, a brief historical analysis of the CED movement is in order. Several scholars have provided thoughtful and comprehensive analyses and critiques of the CED movement along with its multidimensional contributors in law, urban planning, and economics.¹⁶ Unlike other sectors of public interest lawyering, CED lawyering has involved

¹¹ Trubek, *supra* note 4, at 1741.

¹² *Id.*

¹³ *Id.*

¹⁴ See, e.g., Joel F. Handler, *Local Power*, Boston Rev., Apr.-May 1998, at 19, available at <http://bostonreview.mit.edu/BR23.2/handler.html>.

¹⁵ *Id.*

¹⁶ See, e.g., Simon, *supra* note 5; Cummings, *supra* note 5, at 447-58; McFarlane, *supra* note 5, at 321-26.

privatization from its inception. By its core definition, CED entails myriad public-private partnerships between government and nonprofit, nongovernmental organizations funded by private philanthropy, individuals, academic institutions, and corporations. Such nonprofit groups are accountable to defined communities, and they work together to develop decent and safe housing, jobs, and business opportunities, childcare, and health care for low income people.¹⁷ Moreover, CED practice, influenced by federal policy aimed at the “rebirth of urban democracy”¹⁸ and fueled largely by tax incentives, has forced “multistranded relations”¹⁹ spurring synergy and collaborative capacity. Community organizing principles underpin relations in CED practice.²⁰ Given this backdrop, this Article examines changes and current issues in CED practice with an emphasis on the Author’s experience as a clinical professor, scholar, and practitioner in the field.

II. Significant Changes in Public Interest Lawyering: The CED Experience

Community development takes time. CED lawyers facilitate coalition building. Such high levels of cooperative interaction were not common in the traditional public interest lawyer model.²¹ This new trend, which I call “Enhanced Strategic Collaboration,” is a central theme in CED work today. The term suggests an innovative public-private, participatory, interdisciplinary alliance that maximizes resources and identifiable CED goals. It is characterized by an increased level of involvement from the business community and other actors not present in earlier CED initiatives.

This Article analyzes three questions. First, what changes have emerged in CED practice? Second, what does the phenomenon of privatization mean for CED lawyering? Third, how can CED lawyers maximize resources for their clients?

First, a central change in CED practice is the increased importance of economic self-sufficiency. Small business development and its subset, microenterprise, have gained increased national attention due to changes in the economy, welfare reform, and advances in technology.

¹⁷ Simon, *supra* note 5, at 7-40.

¹⁸ *Id.* at 16-17.

¹⁹ *Id.* at 25-26, 49.

²⁰ Cummings, *supra* note 5, at 404-09.

²¹ For example, in describing the Wisconsin Center for Public Representation’s (CPR) shift from traditional advocacy to privatized advocacy, Professor Trubek identified three new trends in public interest practice that gradually appeared over the decade: (1) strengthening nonprofits; (2) working with collaborative groups; and (3) monitoring performance of public and private agencies in the system. Trubek, *supra* note 4, at 1744-47. Her analysis of each area confirms her thesis that public interest lawyers can work effectively in a privatized system to advance the cause of various constituencies. *Id.* at 1740. As an example, she cited CPR’s work to strengthen nonprofits by acting as a watchdog for grant programs made available by the state’s Public Service Commission. *Id.* at 1745-46. The grants help nonprofits obtain technology funding for equipment and training which should enable them to be more competitive in future contracting. *Id.* Comparing traditional public interest lawyering to new public interest lawyering, Professor Trubek concluded that another positive consequence of privatization is that “government agencies no longer have exclusive decision-making power.” *Id.* at 1745.

Microenterprise development programs have grown to more than seven hundred nationally and small business development has been touted as “the new public interest law.”²² The microenterprise development industry is strengthening its base in sectoral markets and business incubators.²³ Business development CED models, such as microenterprise development, have grown in large part because programs with middle class constituencies and support from the business community are less politically vulnerable. They enjoy bipartisan support.²⁴

Second, what does the phenomenon of privatization mean for CED lawyering? There are four key areas requiring further exploration and analysis:

1) New economy principles of social venture philanthropy, social entrepreneurship, and social purpose business, are shaping nonprofit Community Development Corporations (CDCs) and Community-Based Organizations (CBOs); 2) Many CDCs and CBOs are mature and in need of a wider array of legal services and enhanced strategic collaboration; 3) Technology advances, the rise of small businesses, and a national emphasis on economic self-sufficiency are impacting CED practice; and 4) Leadership development and community organizing initiatives must emerge to foster CED goals, especially in basic education, job creation, and job training. Moreover, leadership development and community organizing must be grounded in an understanding of economic culture, social capital, and the relationships between assets and race.

Third, in order to maximize resources for clients, lawyers will need to gather information about resources and policy initiatives for CED. Both the business and university communities have enormous resources. Two examples are noteworthy. First, Business Leadership Coalitions, groups of key business leaders who view themselves as social venture capitalists, have the capacity to identify a strategic focus for their efforts and marshal the seed capital required to elicit other private and public funds.²⁵ Second, as Gregory L. Volz points out, the role of

²² Susan R. Jones, *Representing the Poor and Homeless: Innovations in Advocacy: Tackling Homelessness Through Economic Self-Sufficiency*, 19 St. Louis U. Pub. L. Rev. 385, 389 (2000) (citing *Microenterprise Fund for Innovation, Effectiveness, Learning and Dissemination & Ass'n for Enter. Opportunity, Microenterprise Fact Sheet Series, Fact Sheet #1--Microenterprise Development in the United States: An Overview* (Fall 2000), at <http://www.microenterpriseworks.org/about/factsheets/factsheet1.pdf>) [hereinafter Jones, Tackling Homelessness]; Jones, *supra* note 1, at 200.

²³ Susan R. Jones, *A Legal Guide to Microenterprise Development: Battling Poverty Through Self-Employment* (1998). For information on sectoral markets, see *Microenterprise Fund for Innovation, Effectiveness, Learning and Dissemination (FIELD), Making the Connection: Appalachian Center for Economic Networks, ACEnet* (2000) (examining how the Center helped microentrepreneurs break into the specialty and natural food sectors); Ass'n for Enter. Opportunity, *About Microenterprise*, <http://www.microenterpriseworks.org/about/keyelements.htm> (last visited Apr. 1, 2002).

For information about business incubators that offer fledgling companies benefits and resources such as office space and certified kitchens for catering, see Nat'l Bus. Incubation Ass'n, *Principles and Practices of Successful Business Incubators*, http://www.nbia.org/best_practices.html (last visited Apr. 1, 2002). See also Editorial, *Urban Nourishment*, Boston Globe, Mar. 3, 2001, at A14 (describing a kitchen incubator that “combines powerful local thinking about competitive business advantages in the inner city with global thinking about micro-enterprise zones, a worldwide tool of sustainable development”).

²⁴ See Simon, *supra* note 5, at 18-68.

²⁵ James E. Austin, *Business Leadership Coalitions*, 105 Bus. & Soc'y Rev., 305, 307 (2000).

academia in community partnerships is a resource in need of further study.²⁶ Illustrative of this is the bipartisan initiative, Linking Educators and Developing Entrepreneurs for Reaching Success (LEADERS), recently introduced by Senators Edward M. Kennedy (D.-Mass.) and Mike DeWine (R.-Ohio).²⁷ The proposed bill “would create a \$20 million fund to provide competitive grants to business incubation programs affiliated with colleges and universities.”²⁸ A recent press release explains:

The LEADERS Act authorizes the Secretary of Education to provide matching grants to acquire or renovate incubator space, develop curricula or training for incubator businesses or managers, or conduct feasibility studies for developing and locating incubators. Priority is given to programs in economically distressed areas, those that provide strong entrepreneurial education opportunities and those that emphasize cooperation among businesses, academic institutions, and local economic and government officials.²⁹

A. New Economy Principles are Changing the Nature of Charitable Giving: Social Venture Philanthropy, Social Entrepreneurism, and Social Purpose Businesses

There are several new trends in charitable giving which impact CED lawyering.³⁰ Researchers refer to the “golden era of philanthropy”³¹ and contend that the multi-millionaires of the booming technology industries are changing the way philanthropy is approached.³² A number of foundations are analyzing “the nonprofit capital market.”³³ The theory is that investments in nonprofits are still capital investments seeking social and economic returns, not purely financial rewards. This analysis requires that nonprofit capital investments be managed with the due diligence and strategic thinking applied in the for-profit world. Although

²⁶ Gregory L. Volz, *et al.*, *Higher Education and Community Lawyering: Common Ground, Consensus, and Collaboration for Economic Justice*, 2002 Wis. L. Rev. 505.

²⁷ Press Release, Nat'l Bus. Incubation Ass'n, *NBIA Supports Legislation to Strengthen Ties Between Academia and Entrepreneurs* (Aug. 21, 2001), <http://www.nbia.org/press/academia.html> (last visited Mar. 21, 2002).

²⁸ *Id.*

²⁹ *Id.*

³⁰ Jones, *Tackling Homelessness*, *supra* note 21, at 409: The private efforts of wealthy Americans complement the work of government. 73% of Americans gave to charity last year. In 1999, charitable gifts totaled \$190 billion. One survey found that 90 percent of business owners contribute to charity. America, claiming to be the richest, strongest and smartest nation on earth produces more millionaires and billionaires than any other country.

³¹ Karl Taro Greenfeld, *The New Philanthropy, A New Way of Giving*, *Time*, July 24, 2000, at 48, 50.

³² *Cf.* Jed Emerson, *In Brief: Giving, Study Shows Gifts by Entrepreneurs*, *Chron. Philanthropy*, Nov. 30, 2000.

³³ *Cf. id.*

government funding of nonprofit groups will remain at the forefront, government spending has slowed considerably and more cutbacks are projected.³⁴

The nonprofit capital market will also shift considerably in the future; the wealth creation of the past fifteen years from baby boomers' inheritances is projected to exceed \$41 trillion in the next twenty years.³⁵ This new trend in venture philanthropy, using the aggressive venture capital methods that created the new wealth, means that nonprofit organizations will have to consider entrepreneurial approaches to sustainability. "This new breed of philanthropist scrutinizes each charitable cause like a potential business investment, seeking maximum return in terms of social impact--for example, by counting the number of children taught to read or the number inoculated against malaria."³⁶

1. Social venture philanthropy

Social Venture Philanthropy (SVP) is a new paradigm in charitable giving influenced by venture capital. New donors who are turning their attention to charitable issues, now that they have acquired substantial wealth, drive SVP. The SVP model often allows for longer term investments (three to five years) in nonprofit organizations which are monitored and evaluated for progress, management, and expansion capabilities, eliminating the need for nonprofit groups to reapply, yearly in some cases, for grant funds. SVP models choose organizations led by social entrepreneurs: nonprofit leaders who combine social philanthropic and business values.³⁷ Other euphemisms for these ideas--strategic philanthropy, outcome funding, engaged grant making, and grant making for effective organizations--are also being explored as many social actors believe that the approaches of the past have not resulted in the desired impact or change. Like the angst over privatization, new trends in charitable giving may have unanticipated benefits.

Critics of SVP say that not all problems can be solved with commercial approaches. Some believe that donors are already employing the characteristics of venture philanthropy--measurable and result-oriented giving.³⁸ Others caution that the outcome measure-driven nature of SVP may thwart the learning process and nonprofit groups' willingness to openly discuss and share lessons learned.³⁹ For example, some grant funding agencies may require a seat on the

³⁴ Between 1992 and 1996, government funding increased only 2.9% compared to 8.4% between 1987 and 1992. Jed Emerson, Roberts Enter. Dev. Fund, *The U.S. Nonprofit Capital Market: An Introductory Overview of Developmental Stages*, Investors and Funding Instruments 190 (2000).

³⁵ Greenfeld, *supra* note 30, at 49-50.

³⁶ *Id.* at 51.

³⁷ Emerson, *supra* note 33, at 188.

³⁸ Shashank Bengali, *Accountability Becomes Key in Charity Giving*, San Jose Mercury News, Aug. 9, 1999, at 1E; Greenfeld, *supra* note 30, at 51; David Whitford, *The New Shape of Philanthropy: The Internet Generation Is Bringing the Principles of Venture Capital to Philanthropy. It's Innovative--But Is It Effective*, Fortune, June 12, 2000, at 315.

³⁹ See Whitford, *supra* note 37, at 316.

board of directors, a model used in equity investments. Critics highlight the chilling effect this may have in a nonprofit setting.⁴⁰

2. Social entrepreneurship and social purpose businesses

Social entrepreneurship, “a provocative blend of social, philanthropic and business values,”⁴¹ is an integration of social work, community economic development, and business development. Social purpose businesses may force new results from CED practice. The National Center for Social Entrepreneurs broadly defines social entrepreneurship as using smarter business and marketing practices to generate more revenue, fueling mission-related activities.⁴² On the enterprise spectrum, social entrepreneurship is somewhere between purely philanthropic and purely commercial. The philosophical underpinning of the movement is that people are not “service [d] . . . out of poverty.”⁴³ As discussed later in this Article, the ability to exit from poverty is governed by employment, asset accumulation, and wealth creation.⁴⁴

The current shift in the nonprofit sector is influenced by several factors: the advent of devolution in which federal funding for myriad social, educational, and other programs is transferred to the states; the rise of social entrepreneurship; outsourcing inspired by the reinventing government movements; for-profit competition in acquisitions; mergers and alliances; outcome performance; and the evolving practice of venture philanthropy.

The outcome driven model has propelled nonprofit organizations such as the Seattle Children's Home to call for businesses and nonprofit groups to work toward the goal of no children living on the streets of Seattle by 2005.⁴⁵ The organization is an example of enhanced strategic collaboration. It is described as:

[A] new model based upon private investment where the kids would get well, stay well, and become successful adults. It would be a model where the dollars would follow the kids. But, it had to be a business plan and not a social commentary, for it would need to attract not just donations but investments.⁴⁶ Café Habitat, a for-profit organic coffee business started in 1995 by

⁴⁰ Cf. Bengali, *supra* note 37.

⁴¹ Roberts Found. Homeless Econ. Dev. Fund, *New Social Entrepreneurs: The Success, Challenge and Lessons of Non-Profit Enterprise Creation* viii (1996) [hereinafter *New Social Entrepreneurs*].

⁴² Jones, Tackling Homelessness, *supra* note 21, at 407 n.99 (citing Nat'l Ctr. for Social Entrepreneurs, *Social Entrepreneurship and Venture Capitalism: The Future of Philanthropy?* Washington Area Lawyers for the Arts, Second Annual Arts and Entertainment Law Symposium (Nov. 9, 2000)); *see also* <http://www.socialentrepreneurs.org>. (last visited Apr. 20, 2002).

⁴³ *New Social Entrepreneurs*, *supra* note 40, at 3.

⁴⁴ *Infra* Part II.F.

⁴⁵ By the Year 2005 No Child Will Have to Live on the Streets of Seattle; *President of Seattle Children's Home Issues Call for Partnership with the For-Profit Sector to Eliminate Homelessness Among Children*, PR Newswire, May 12, 1999.

⁴⁶ *Id.*

formerly homeless people and shelter workers from the Grove Street Shelter in Massachusetts, also employs enhanced strategic collaboration.⁴⁷ The business began by hosting fund-raising events to explore options for economic development for homeless people.⁴⁸ Two years later, assisted by business mentor Dean Cycon, a former corporate lawyer and owner of Dean's Organic Coffee, Café Habitat incorporated.⁴⁹ Like its mentor, Café Habitat buys coffee from independent coffee growers in Latin America.⁵⁰ Undaunted by skeptics who thought Café Habitat would not be able to secure U.S. Department of Housing and Urban Development funding through the Innovation Economic Initiatives Program, Café Habitat, with its fiscal agent,⁵¹ Service Net, a nonprofit organization, received a three-year, \$400,000 grant from HUD to create a first-of-its-kind Small Business Incubator Project.⁵² Now in its fourth year of funding, Café Habitat has trained more than one hundred homeless people.⁵³

B. CDCs and CBOs Need a Wider Array of Legal Services to Support Enhanced Strategic Collaboration.

Today's CDCs and CBOs engage in complex joint venture tax credit financing deals.⁵⁴ Under the New Markets Tax Credit (NMTC) program, Community Development Entities (CDEs) must be for-profit concerns.⁵⁵ CDCs and CBOs will, therefore, need to create for-profit legal entities to participate in the program.⁵⁶

With the advent of NMTCs, such deals may become more prevalent. One scholar observes that “enhanced access to corporate and commercial lawyers by people and communities of color can make a positive difference in the quest for racial equity in the twenty-first century, and that

⁴⁷ Interview with Dafney Bishop, Founder of Café Habitat (Aug. 4, 2000).

⁴⁸ *Id.*

⁴⁹ *Id.*

⁵⁰ *Id.*

⁵¹ Fiscal agency, also known as fiscal sponsorship, arises when a project seeks support from private foundations, government agencies, or through individual or corporate tax deductible contributions and identifies an I.R.C. § 501(c)(3) sponsor to receive funds on its behalf for project purposes. Gregory L. Colvin, *Fiscal Sponsorship: 6 Ways to Do It Right* 2-3 (Geoffrey Link ed., 1993).

⁵² Interview with Dafney Bishop, *supra* note 46; Telephone Interview with Rebecca Muller, Shelter and Housing Division Leader, Service Net (Oct. 13, 2000).

⁵³ Interview with Dafney Bishop, *supra* note 46.

⁵⁴ See, e.g., Pappas, *supra* note 8, at 325-28.

⁵⁵ *Id.* at 325-26.

⁵⁶ *Id.*

law schools have a substantial role to play in facilitating that access.”⁵⁷ CED practitioners and advocates are utilizing more interdisciplinary strategic relationships. A response to this phenomenon is the emergence of CED projects, such as the DC Bar CED Pro Bono Project.⁵⁸ The Project offers three important programs: (1) the law firm match program that assigns law firms to serve as general counsel to CDCs and mature CBOs, thereby strengthening their capacity; (2) the quarterly Neighborhood Clinics that match transactional pro bono lawyers with neighborhood businesses and nonprofit organizations; and (3) CED education.⁵⁹ The DC Bar Project is also exploring the availability of other collaborators--in accounting for example--because many clients placed through the project noted accounting concerns.⁶⁰ It has also recently launched a pro bono nonprofit childcare initiative.⁶¹

While interdisciplinary collaboration in CED practice is not new, the types of collaborators and the strategic nature of the relationships are different from the old traditional public interest practice. While relationships with urban planning and architecture firms have been common in the housing context, new practices involve business and engineering, social work, strategic management, education, and public policy.

1. Multidisciplinary practice: implications for CED lawyering

The debate over MDPs, or the combination of accounting and law firms, evinces the changing roles of lawyers. The concept emerged from the rapid globalization of financial markets, the growth of corporate clients, and the convergence of services offered by the big five

⁵⁷ Alfred Dennis Mathewson, *Commercial and Corporate Lawyers 'N The Hood*, 21 U. Ark. Little Rock L. Rev. 769, 769 (1999); see also Steven H. Hobbs, *Toward a Theory of Law and Entrepreneurship*, 26 Cap. U. L. Rev. 241, 297-98 (1997).

⁵⁸ There are a growing number of similar initiatives, such as Community Legal Resources project in Detroit, Michigan, Legal Aide of Central Texas, and the Pro Bono Project of the State Bar of Atlanta. In addition, many other established programs exist, including the National Economic Development and Law Project, Lawyers Alliance, Public Counsel, and The Community Economic Development and Law Project. The D.C. Bar CED Project is the only such bar-sponsored program with a law school collaborator. Telephone Interview with Deborah Austin, Staff Director, D.C. Bar CED Pro Bono Project (Apr. 22, 2002).

⁵⁹ Susan R. Jones, *Pro Bono Pays Off: Transactional Lawyers Supporting Economic Development in the Nation's Capitol*, 9 J. Affordable Housing & Community Dev. L. 18 (1999), reprinted in GPSolo, Mar. 2000, at 38. The Author serves on the DC Bar CED Pro Bono Project Advisory Committee, and the George Washington University Law School Small Business Clinic (GWUSBC) is a strategic partner of the Neighborhood Clinic Project. Law students screen cases for pro bono assignment by conducting a thorough intake interview in person at the business location, on the phone, or at the GW Clinic, write comprehensive intake memoranda, participate in community tours, and assist bar staff and volunteer lawyers on clinic night.

⁶⁰ Pro bono accounting services for CED work have been difficult to identify. The Cultural Alliance of Greater Washington, which provides a range of pro bono services to arts organizations, is a model for coordinated services and one stop shopping. See generally, Cultural Alliance of Greater Washington, <http://www.cultural-alliance.org/programs/index.html> (last visited Apr. 2, 2002). Nonprofit arts organizations can seek strategic management, accounting, business development, board development, marketing, and related assistance. *Id.*

⁶¹ Program Materials: *Legal Aspects of Operating a Nonprofit Childcare Center* (Jan. 31, 2002) (cosponsored by Covington & Burling and the DC Bar CED Pro Bono Project) (on file with author).

accounting firms and traditional law firms. Although corporate counsel is recognized as both a business and legal consultant, lawyers today handle financial, political, and employment issues, in addition to traditional legal issues. Similarly, accounting firms work in areas outside the scope of traditional accounting services such as auditing. Moreover, they negotiate settlements and consult on copyright, trademark, and patent matters. Although the average small businessperson would not be able to afford the services of an MDP, consumers' need for "one stop shopping" has fueled the MDP debate. While it centers on resistance to reordering well established economic interests within the profession,⁶² the debate informs CED public interest lawyers about the importance of skills to complement the multifarious needs of CED clients. For example, imagine an entity in which multiple problems of low income clients could be addressed in a one stop shop: assistance with an eviction, analysis of employment illegalities,⁶³ mental health counseling for the problems associated with poverty, life skills and parenting skills training, job counseling, and personal coaching.

The MDP debate also fueled a discussion within the legal services community about the best ways to deliver legal services⁶⁴ and the development of social justice collaboratives, interdisciplinary relationships involving lawyers characterized by "frequent, ongoing interaction, commitment to the relationship and trust" and serving a clearly defined client group with a vision of how to meet the needs of the group.⁶⁵ Law school legal clinics encompass a component of this service delivery system. Moreover, they play a critical role in educating a future generation of lawyers who will be the next public interest innovators.

2. The emergence of enhanced strategic collaborations--examples from law school clinical practice

George Washington University pioneered in the interdisciplinary arena by creating an Intra-University Consortium of Faculty in Business, Law and Engineering to facilitate CED initiatives.⁶⁶ The first project involved a George Washington University Law School Small

⁶² Breakley, *supra* note 2, at 275-76; James W. Jones, *Focusing the MDP Debate: Historical and Practical Perspectives*, 72 Temp. L. Rev. 989, 995-96 (1999).

⁶³ Rick McHugh, *Recognizing Wage and Hour Issues on Behalf of Low-Income Workers*, 35 Clearinghouse Rev. 289 (2001).

⁶⁴ Because low to moderate income people are unable to afford private legal services, there are a number of mechanisms to enhance limited resources of pro bono legal service delivery. The notion of "unbundling" legal services involves separating all of the various services lawyers provide such as consultations, drafting pleadings, court representation and letter writing, and allowing the client or a nonlawyer to perform some of these tasks. Louise G. Trubek & Jennifer J. Farnham, *Social Justice Collaboratives: Multidisciplinary Practices for People*, 7 Clinical L. Rev. 227, 228 (2000). Other services are do-it-yourself systems, advice hotlines, and community education. *Id.*; see also Bruce A. Green, *Foreword: Rationing Lawyers: Ethical and Professional Issues in the Delivery of Legal Services to Low-Income Clients*, 67 Fordham L. Rev. 1713 (1999); Mary Helen McNeal, *Having One Oar or Being Without a Boat: Reflections on the Fordham Recommendations on Limited Legal Assistance*, 67 Fordham L. Rev. 2617 (1999).

⁶⁵ Trubek & Farnham, *supra* note 63, at 229.

⁶⁶ Susan R. Jones, *Clinical Legal Practice as a Vehicle for Justice: Enabling Community Economic Development at The George Washington University Law School*, 1998 Int'l Ass'n for Bus. & Soc'y 103, 105.

Business Clinic (GWUSBC) client, SiNGA, Inc., a nonprofit job-training program in the technologically-advanced fashion industry.⁶⁷ By partnering student and faculty resources in law, business, and engineering, the project created a research and development team addressing issues ranging from trademark registration and business models to social cost analysis, production feasibility, and manufacturing operations.⁶⁸ The project is an example of a social justice collaborative--innovative practices using lawyers and nonlawyers.⁶⁹

The Intra-University Consortium of Faculty in Business, Law and Engineering's work to facilitate community economic development was influenced by the National Business School Network (NBSN) of the Initiative for a Competitive Inner City (ICIC),⁷⁰ which acknowledges the importance of America's graduate schools in fostering inner city development. NBSN was established to engage urban graduate schools in fostering inner city development and serving inner city companies, while recognizing that business school students, faculty, and alumni are powerful constituencies for "disseminating new thinking and changing perceptions about the inner city among future entrepreneurs and corporate leaders."⁷¹ NBSN developed a manual, *An Inner City Business Development Strategy for Washington, D.C.-Based Graduate Business Schools*, for the D.C. Department of Housing and Community Development.⁷² The study identified six engines of economic growth: (1) information, technology, and telecommunications; (2) hospitality, entertainment, tourism, and specialty retail; (3) business, professional, financial, and association services; (4) media and publications; (5) university, educational, and research institutions; and (6) biomedical research and health services.⁷³

⁶⁷ Susan R. Jones, *The Case of SiNGA: Assessing a Four-Year Intervention*, 1999 Int'l Ass'n for Bus. & Soc'y 115, 116.

⁶⁸ *Id.*

⁶⁹ Louise G. Trubek & Jennifer J. Farnham, Ctr. for Pub. Representation, Inc., *How to Create and Sustain a Successful Social Justice Collaborative* 7, <http://www.law.wisc.edu/pal/Soc%20Justice%20book.pdf> (last visited Apr. 2, 2002).

⁷⁰ The Initiative for a Competitive Inner City (ICIC)'s website explains that it is:

[A] national, not-for-profit organization founded in 1994 by Harvard Business School Professor Michael E. Porter.

ICIC's mission is to spark new thinking about the business potential of inner cities, thereby creating jobs and wealth for inner-city residents. ICIC believes that a sustainable inner city economic base will depend on private, for-profit business development and investments based on economic self-interest and genuine competitive advantage.

ICIC leverages private-sector resources through a new concept of corporate philanthropy that emphasizes business-to-business relationships. Initiative for a Competitive Inner City, About Us, <http://www.icic.org/about/about.html> (last visited Mar. 17, 2002).

⁷¹ Jones, *supra* note 66, at 117.

⁷² *Id.*

⁷³ *Id.*

The George Washington faculty team reviewed the collaboration, identifying significant lessons.⁷⁴ First, the project created a research and development team that would not have been available without large amounts of capital.⁷⁵ Second, collaborators must build relationships with a wide array of business organizations, nonprofit, and faith-based groups.⁷⁶ Third, sustained funding for university-community initiatives is needed.⁷⁷ There must also be an evaluative mechanism to assess their impact from both an educational and client perspective.⁷⁸ Courses employing action research and service learning can encourage such partnerships.⁷⁹

Entertainment and tourism is an engine of economic growth in Washington, D.C. and other regions. Some regions promote cultural tourism, entertainment, and the arts.⁸⁰ The GWUSBC's longstanding partnership with Washington Area Lawyers for the Arts (WALA), a nonprofit "alliance of lawyers and artists dedicated to encouraging lawyers to bring their special skills and resources to bear in support of the arts, artists and arts organizations" has contributed to WALA understanding the intersection of CED, art, entertainment, and cultural tourism.⁸¹

WALA cosponsored the first Future of Music Coalition Conference.⁸² Art-related CED practice is changing; technology and intellectual property issues have altered the music industry by allowing independent recording artists to market themselves via the Internet, without backing by the large record companies.⁸³ The Future of Music Coalition (FMC) is: a not-for-profit

⁷⁴ *Id.*

⁷⁵ *Id.*

⁷⁶ *Id.* Examples of the organizations with whom the GW faculty team has relationships include: the Washington D.C. Chamber of Commerce; the Greater Washington Area Board of Trade (and its Neighborhood Business Partners Program); the Small Business Development Centers in Washington D.C., Maryland, and Virginia; the U.S. Small Business Administration and its Small Business Development Center Program, Service Corps of Retired Executives (SCORE); business incubators; microenterprise programs; faith-based organizations; and community development corporations. *Id.*

⁷⁷ *Id.* at 118.

⁷⁸ *Id.*

⁷⁹ For a discussion of such courses, see Mary Pat Treuthart, 'Service Learning' Brings Real World Into Class, Law Tchr. (Gonz. U. Inst. for L. Sch. Teaching, Spokane, Wash.), Spring 1996, at 12.

⁸⁰ See also Molly Singer, *Culture Works: Cultural Resources as Economic Development Tools*, Pub. Mgmt., Aug. 2000, at 11-16.

⁸¹ Washington Area Lawyers for the Arts, Home Page, [http:// www.thewala.org/index.html](http://www.thewala.org/index.html) (last visited Apr. 8, 2002). In one year, the GWUSBC handled thirty percent of WALA's nonprofit cases. The GWUSBC received the 1998 Service Award in honor of exemplary pro bono service and other support to area artists and arts organizations as well as the 2000 Wall of Fame Award for its service to WALA clients and support of WALA's mission and programs.

⁸² For more information about the Future of Music Coalition, visit its website at <http://www.futureofmusic.org>. (last visited Apr. 8, 2002).

⁸³ The GWUSBC represents individual musicians (e.g. jazz and rap artists), music agents (e.g. personal managers), and talent agencies.

collaboration between members of the music, technology, public policy and intellectual property law communities. The FMC seeks to educate the media, policymakers, and the public about music/technology issues, while also bringing together diverse voices in an effort to come up with creative solutions to some of the challenges in this space. The FMC also aims to identify and promote innovative business models that will help musicians and citizens to benefit from new technologies.⁸⁴ Examples of GWUSBC (and WALA-referred) clients involved in art, economic, or cultural development include a cultural institute which trains inner city youth in graphic design and the art of cartooning, an Asian dance company, and an Ethiopian art and cultural center. Illustrative of an enhanced strategic collaboration is a program created by GWUSBC and the Greater Washington Area Board of Trade (BOT)/Community Business Partnership/BusinessLinc program to match neighborhood small business owners, referred by local CDCs, with a BOT member-mentor. As a result of their collaboration, local businesses have increased revenue and expanded markets. GWUSBC students conducted workshops for neighborhood entrepreneurs-- participants in the Community Business Partnership/BusinessLinc program--on Washington D.C. tax incentives and the designation of Washington D.C. as an enterprise zone.⁸⁵

To assist capacity-building efforts by nonprofit clients, the GWUSBC cosponsored a workshop series with the National Center for Nonprofit Law, the only national provider of legal assistance to nonprofit organizations, allowing GWUSBC students and clients to learn about current developments in nonprofit law.⁸⁶ Seminar topics included nonprofit financing and accounting, nonprofit tax general principles and board issues, liability and insurance issues, wage and hour issues affecting employees, the Americans with Disabilities Act, Family and the Medical Leave Act, sexual harassment and employee privacy issues, and hiring, firing, and disciplining employees.⁸⁷ Seminar participants included nonprofit staff and board members, lawyers and law students who learned from one another.⁸⁸ Seminar faculty (national experts in the field) provided sample documents, checklists, and other written guidance.

Devolution and technology advances have contributed to the rise in small businesses and nonprofit organizations, thereby creating a demand for enhanced legal services. Small businesses, promoted as the “new public interest law,” will continue to require a range of expertise, especially in the evolving fields of law such as technology. The case examples and organization partnerships, detailed above, simply did not exist in the early years of public interest practice.⁸⁹

⁸⁴ Future of Music Coalition, Welcome to the Future of Music Coalition, at <http://www.futureofmusic.org> (last visited Apr. 8, 2002).

⁸⁵ Effective Jan. 1, 1998, parts of Washington, D.C. are treated as an empowerment zone until 2003. Internal Revenue Serv., U.S. Dep't of the Treasury, Pub. No. 954, *Tax Incentives for Empowerment Zones and Other Distressed Communities*, available at http://www.irs.gov/forms_pubs/pubs.html (last visited Apr. 8, 2002).

⁸⁶ Jones, *supra* note 1, 228 n.116.

⁸⁷ *Id.*

⁸⁸ *Id.*

⁸⁹ *Id.*

C. Technology Is Playing a Critical Role in the Evolution of CED Practice

The examples discussed above, SiNGA and the Future of Music Coalition Conference, highlight the impact of technology on CED practice. The issue of the digital divide will be a thread in future CED discourse. Two recent ABA initiatives could infuse the dialogue.

First, the ABA Commission on Homelessness and Poverty wrote a policy recommendation on the digital divide approved by the ABA House of Delegates at the Annual Meeting in August 2001.⁹⁰ The background of the report, noting distinctions between the information-rich and the information-poor, commented that the digital divide issue is arguably the most important social issue stemming from the digital revolution.

Second, the ABA Business Law Section recently instituted a CED Standing Committee to create an opportunity for lawyers whose primary practice is with low-to-moderate income entrepreneurs and community-based organizations; work to revitalize rural and inner-city American communities through the development of local businesses, participate in the Business Law Section and learn from the expertise and resources of thousands of other business lawyers from around the country.⁹¹ The rationale behind the need for this committee is manifold. The shift from a manufacturing economy to an information/service economy and recent developments in technology have resulted in the rapid growth of small businesses and microbusinesses, as well as an increased interest in entrepreneurship. Moreover, federal programs such as the Community Renewal and New Markets Initiative of 2000 (New Markets),⁹² which created a package of tax credits to encourage private equity investment in underserved communities, are fueling entrepreneurship. Nonprofit corporations are also expected to operate using business principles, creating new initiatives in social entrepreneurship,

⁹⁰ Am. Bar Ass'n Comm'n on Homelessness and Poverty, Commission on Homelessness and Poverty Policy Positions Adopted by the Delegates at the 2001 ABA Annual Meeting: Digital Divide (2001), <http://www.abanet.org/homeless/policylist.html> (last visited Apr. 8, 2002). The full text reads:

RESOLVED, That the American Bar Association urges Congress and the Administration to enact legislation and/or strengthen and develop initiatives to establish and support technology-based access to justice in underserved communities.

FURTHER RESOLVED, That the American Bar Association urges Congress, the Administration, and other appropriate entities to enact legislation and/or strengthen and develop initiatives to bridge the "digital divide," the gap between those who have access to technology and/or the requisite skills to use such technology effectively and those who do not, by increasing access to technology and technology skills for underserved communities.

FURTHER RESOLVED, That the American Bar Association urges state, local and territorial bars to establish and support initiatives to bridge the "digital divide" by increasing access to technology and technology skills for underserved communities.

Id. The Author served on the ABA Commission on Homelessness and Poverty from 1998-2001.

⁹¹ The Author is the co-chair (with Professor Myles V. Lynk of Arizona) of the ABA CED Standing Committee created in May 2001. For more information, see http://www.abanet.org/buslaw/comm_dev/home.html. (last visited Apr. 20, 2002).

⁹² Pub. L. No. 106-554, § § 101-401, 114 Stat. 2763, 2763A-589 (2000).

social purpose business, and social venture philanthropy. Many community-based nonprofit organizations have created for-profit subsidiaries to spur business development in low income communities.

Given these trends, there is an important role for business lawyers in this emerging field. Business attorneys can match clients who are unaware of business resources and tax credits with economic initiatives such as New Markets. Attorneys involved in CED activities will also influence economic development policy nationally, regionally, and locally. The CED Committee is a unique and unparalleled forum to: (1) share knowledge and develop policies about the emerging law of community economic development; (2) support transactional lawyers who are involved in CED work; (3) work with the Business Law Section's Pro Bono Committee to help bar associations establish pro bono CED opportunities for lawyers; (4) assist law school faculty in the development of business law curriculum that will enable the next generation of business lawyers to assist lenders, underwriters, and community-based economic development organizations assess risk, structure investments, and comply with applicable statutory requirements in responding to CED opportunities; and (5) address the professional needs of those lawyers who are furnishing services to individuals and communities that previously have not had access to business law expertise.

D. New Markets Tax Credits

On December 21, 2000, President Clinton signed the Community Renewal Tax Relief Act of 2000.⁹³ In addition to expanding low income housing tax credits by forty percent over two years, the act also created New Markets Tax Credits (NMTCs), a tax benefit for investors supporting economic development.⁹⁴ It “infuse[s] up to \$15 billion of new capital into commercial projects in low-income census tracts.”⁹⁵ Observers believe that NMTC is a significant departure from past economic development efforts and more likely to succeed because it employs various nonprofit, for-profit, and public sector actors and creates a new system of delivering subsidized money through “community development entities” (CDEs).⁹⁶ CDEs have two primary functions.⁹⁷ The first is to identify businesses and projects that will benefit low income communities and make the funds available.⁹⁸ Second, CDEs must market these opportunities to investors as sound economic decisions.⁹⁹ There is a multi-step process to

⁹³ *Id.* at § § 101-166, 114 Stat. at 2763A-589; Gregory Maher, *At a Crossroad*, 90 Nat'l Civic Rev. 199, 201 (2001).

⁹⁴ Community Renewal Tax Relief Act of 2000, § 121, 114 Stat. at 2763A-605; Pappas, *supra* note 8, at 323.

⁹⁵ Maher, *supra* note 92, at 201; Pappas, *supra* note 8, at 323.

⁹⁶ Pappas, *supra* note 8, at 323.

⁹⁷ *Id.* at 325.

⁹⁸ *Id.*

⁹⁹ *Id.*

deliver federally subsidized funds to businesses or projects in targeted areas.¹⁰⁰ CDEs, for-profit entities, apply in a competitive process to the U.S. Department of Treasury Community Development Financial Institution Fund to receive an allocation of tax credits.¹⁰¹ CDE managers can sell the credits along with an equity interest to investors in exchange for cash.¹⁰² The cash is used to make “qualified investments” in low income communities.¹⁰³ CDEs must meet the following three requirements to participate in the NMTC program: (1) the Treasury must certify the CDE; (2) the CDE's primary mission must be to serve low income communities or individuals; and (3) the CDE must give low income individuals or communities representation on its governing or advisory boards.¹⁰⁴ Community development financial institutions and small business investment corporations are automatically eligible, while institutions such as CDCs, community development venture capital funds, and community investment loan funds can create for-profit subsidiaries that are eligible.¹⁰⁵

Investors receive two benefits from the investment: a tax credit and an opportunity to benefit from the qualified investment made by the CDE.¹⁰⁶ Investors are required to invest for a minimum of seven years and receive a tax credit worth five percent of their investment in years one through three.¹⁰⁷ The credit increases to six percent of their investment for years four through seven.¹⁰⁸ Investors receive the value of their equity stake at the end of year seven.¹⁰⁹ Qualified investments include: (1) direct loans and equity investments to “qualified businesses”; (2) loans or equity investments purchased from other CDEs; (3) technical assistance to businesses in low income areas; and (4) loans and equity investments to other CDEs.¹¹⁰ “[T]o qualify for the credit, a business must derive at least 50 percent of its income from conducting business in a low-income community.”¹¹¹ A low income community is defined as one with a twenty percent census track poverty rate or where the median income is less than eighty percent of the median income of the metropolitan area.¹¹²

¹⁰⁰ *Id.*

¹⁰¹ *Id.*

¹⁰² *Id.*

¹⁰³ *Id.*

¹⁰⁴ *Id.*

¹⁰⁵ *Id.* at 325-26.

¹⁰⁶ *Id.* at 326.

¹⁰⁷ *Id.*

¹⁰⁸ *Id.*

¹⁰⁹ *Id.*

¹¹⁰ *Id.* at 327.

¹¹¹ *Id.*

¹¹² *Id.*

NMTC represents a new perspective on privatization:

Allowing private-sector entities to apply for the credit may improve the program's effectiveness, as private CDEs can potentially operate more efficiently than public-sector entities. While local governments, for the most part, only provide services within their own boundaries, a private CDE can expand to the size that allows it to operate most efficiently. The ability to expand creates incentives for the entity to try new strategies-if they work, it can use them in new markets, not just within jurisdictional boundaries.¹¹³ By introducing competition and allowing new types of enterprises to compete, it is anticipated that NMTC will increase the range of CED strategies and the efficiency of service providers.¹¹⁴

E. Leadership and Development and Community Organizing

To sustain the CED movement, leadership development and community organizing must drive a discussion of the future of CED. The leadership development imperative is evident. "Poverty will not be stopped by people who are not poor. If poverty is stopped, it will be stopped by poor people. And poor people can stop poverty only if they work at it together."¹¹⁵

Lawyers can also engage in leadership development and community organizing, as evidenced by sector employment intervention and new models of leadership development.

1. sector employment intervention, a leadership example Sectors of the legal services community, recognizing that its best efforts over three decades have not reduced the need for legal services, have begun to advocate a new approach to complement litigation and other legal service delivery, called "sector employment intervention" (SEI). "SEI is a systematic approach, which 'aims to capture employment opportunities and resources beyond neighborhoods, where employers are most often located'" by "targeting occupations within growing sectors of regional economies and engaging in system reform of markets that have excluded minority workers."¹¹⁶ SEI "has become a CED vehicle to 'connect residents of poor communities to employment opportunities, livable wages and benefits, good working conditions, and advancement opportunities.'"¹¹⁷ "SEI is based on the premise that legal service providers have key access to many institutions in the wider community including 'lawyers, the organized bar, law schools, government officials, religious leaders, business executives, schools, hospitals, universities and

¹¹³ *Id.* at 329.

¹¹⁴ *Id.*

¹¹⁵ William P. Quigley, *Reflections of Community Organizers: Lawyering for Empowerment of Community Organizations*, 21 Ohio N.U. L. Rev. 455, 455 (1994) (quoting Stephen Wexler, *Practicing Law for Poor People*, 79 Yale L.J. 1049, 1053 (1970)); see also Scott L. Cummings & Ingrid V. Eagly, *A Critical Reflection on Law and Organizing*, 48 UCLA L. Rev. 443 (2001).

¹¹⁶ Jones, *Tackling Homelessness*, *supra* note 21, at 401 (quoting Greg Volz & Brad Caftel, *Job Strategies in the Era of Welfare Reform: A Community-Based Model of Legal Services*, 33 Clearinghouse Rev. 569, 571 (2000)).

¹¹⁷ *Id.* (quoting Volz & Caftel, *supra* note 115, at 571).

others.”¹¹⁸ SEI utilizes multiple sectors to achieve the goal of job creation in the information age economy: “SEI requires collaborative partnerships ‘among community-based organizations, industry employers, and employment and training providers, thus integrating human services, economic development, and workforce development strategies.’”¹¹⁹ A key component of SEI is priority-setting to help people obtain and keep good jobs.¹²⁰ This requires better day care, public transportation, and employment support groups.¹²¹

2. faith-based leadership: collective banking

The Bush Administration's faith-based initiatives generated significant controversy.¹²² Despite the creation of an Office on Faith Based Initiatives,¹²³ the program has not fully emerged. The dialogue has overlooked the emergence of collective banking coalitions in Washington, D.C., St. Louis, Pittsburgh, and southern California emphasizing “wealth creation, capacity building, access to capital, strategic planning, and predatory lending.”¹²⁴

In Washington, DC, 240 churches have formed a banking coalition that has secured some \$250 million in loans from Washington area banks since its inception. In addition, through workshops, the group helps individuals become more financially savvy and meet regularly with bank presidents to access their lending policies towards African Americans.¹²⁵ The economic power of the pulpit is exemplified by Former Congressional Representative Floyd Flake's 12,000-member Allen African Methodist Episcopal Church in Queens, New York which has a \$29 million annual budget, a five hundred-student private school, residential housing, and 825 employees.¹²⁶ 3. leadership development, community organizing, and experiential learning with youth: social entrepreneurship in action

The legal scholarship on community organizing and leadership development in neighborhood-based organizations shows a decline in the grassroots mobilization and community action agencies of the 1960s with the evolution of federally-funded and foundation-sponsored

¹¹⁸ *Id.* (quoting Volz & Caftel, *supra* note 115, at 569)

¹¹⁹ *Id.* (quoting Volz & Caftel, *supra* note 115, at 569).

¹²⁰ *Id.* at 401-02.

¹²¹ *Id.*

¹²² See, e.g., Laurie Goodstein, *A Clerical, and Racial, Gap Over Federal Help*, N.Y. Times, Mar. 24, 2001, at A1.

¹²³ Exec. Order No. 13,199, 66 Fed. Reg. 8499 (Jan. 29, 2001).

¹²⁴ Tanu T. Henry, *Faith and Finances Meet in Conference*, http://www.africana.com/DailyArticles/index_20001004.htm (last visited Apr. 11, 2002) (quoting Cindy Minehan, president and CEO of the Federal Reserve Bank of Boston).

¹²⁵ *Id.*

¹²⁶ *Id.*

CED initiatives.¹²⁷ The virtues of leadership development and multiracial community organizing are being espoused with renewed fervor.¹²⁸ Given this phenomenon and the role of lawyers as resource builders, we must identify and craft models. Bugrado Edutrade, selected as one of the hundred most innovative projects in the world for developing the poor in disadvantaged countries, presents such an innovation.¹²⁹ This leadership development and experiential learning curriculum, developed in South Africa, especially for youth and teens, highlights the need for American CED practitioners to learn from our international neighbors and marks significant opportunities for enhanced strategic collaborations.

The problems of juvenile crime, violence, rape, sexual abuse, and alcohol and drug abuse, prevalent in South African townships, are not unlike the problems of urban poverty in America. Flick Asvat, Bugrado founder and Ashoka Fellow,¹³⁰ developed his concept based on the idea that individuals have the power to change their circumstances through tenets such as “mentorship, validation through experience, value of the person, empowerment from within, self-determination, and unity.”¹³¹ Asvat, the youngest of three children born to a black teacher in South Africa, has a strong sense of community service and humanitarian values.¹³² At age twelve, Asvat's own education was interrupted when she fled South Africa as a refugee and again, at age fifteen, when her mother became ill and she had to become the breadwinner for the family.¹³³ The extreme personal pressure resulted in a problem-solving approach that gave rise to Bugrado.¹³⁴ The Bugrado training materials allow students to discover the leaders among themselves.¹³⁵

¹²⁷ Susan D. Bennett, *Little Engines that Could; Community Clients, Their Lawyers, and Training in the Arts of Democracy*, 2002 Wis. L. Rev. 469; McFarlane, *supra* note 5, at 318. See generally Daniel S. Shah, *Lawyering for Empowerment: Community Development and Social Change*, 6 Clinical L. Rev. 217, 221 (1999).

¹²⁸ Cummings & Eagly, *supra* note 114, at 476-78.

¹²⁹ Press Release, *Ashoka, Ashoka Wins CIO 100 Innovators Award* (Aug. 15, 2001) [hereinafter Ashoka Press Release], http://www.ashoka.org/what_is/pr081501.cfm (last visited Apr. 11, 2002).

¹³⁰ To learn more about Ashoka's mission to develop the profession of social entrepreneurship visit the website, http://www.ashoka.org/fellows/social_entrepreneur.cfm (last visited Apr. 11, 2002). Ashoka, innovators for the public, is a global association of leading social entrepreneurs, defined as “rare men and women who possess the vision, creativity, and extraordinary determination of business entrepreneurs, but who devote these qualities to solving social problems.” Ashoka Press Release, *supra* note 128. I had the privilege of witnessing the Burgado Model in Alexandra Township in South Africa at the Carter Primary School. Watching students use the Bugrado curriculum to engage in a critical process for self-selecting leaders and observing the teachers discuss the role of visionary leaders with primary school students was a transformative experience.

¹³¹ Ashoka Fellow Profile, Flick Asvat, <http://www.ashoka.org/fellows/viewprofile1.cfm?PersonId=1522> (last visited Apr. 11, 2002) [hereinafter Flick Asvat]

¹³² *Id.*

¹³³ *Id.*

¹³⁴ *Id.*

¹³⁵ *Id.*

By teaching the “ethic of transformation through mentorship,” Bugrado students learn to participate in their destiny, to understand how their actions determine their future, to become change agents and safeguard their own well-being and that of their peers, to promote human rights, and to help themselves and others deal with emotional trauma.¹³⁶ Students take their own unique abilities, for example in mathematics, sports or art, find students who want to learn from them and join small mentorship groups.¹³⁷ Working with teachers, university students train leaders (ages twelve and above), each of whom find mentors (ages nine to eleven), who in turn find buddies (ages seven to eight).¹³⁸ The mentors share their skill with their “buddies” or mentees, becoming mentors and finding their own group.¹³⁹ At two schools, for example, twenty high school students were trained to teach the Bugrado mentorship model to ten mentors each, creating one hundred new leaders.¹⁴⁰ Each leader found five youths to mentor resulting in one thousand mentors.¹⁴¹ By replicating Bugrado at other schools, over time it can facilitate the development of tens of thousands of leaders.¹⁴² While Bugrado focuses on children, it also brings together parents, teachers, and concerned citizens to teach governance training for parents.¹⁴³ To address the severe unemployment problem in South Africa, parents of Bugrado students are “helped to start their own businesses in order to alleviate poverty.”¹⁴⁴ Youth entrepreneurship is a part of the economic self-sufficiency component of Bugrado.¹⁴⁵ In noting the importance of legal assistance in this full-scale economic development strategy, Asvat observed that Bugrado, a registered charity in South Africa with I.R.C. section 501(c)(3) federal tax exemption, needs intellectual property protection for its well-developed curriculum available for international use, contracts, and license agreements.¹⁴⁶ She further observed that “everyone has value and once they know that there is no limit to what they can accomplish they can realize their full potential.”¹⁴⁷

¹³⁶ F G N Asvat, Bugrado Edutrade Business Plan 9 (on file with author) [hereinafter Bugrado Business Plan].

¹³⁷ Flick Asvat, *supra* note 130.

¹³⁸ Bugrado Business Plan, *supra* note 135, at 4-5.

¹³⁹ Flick Asvat, *supra* note 130.

¹⁴⁰ Bugrado Business Plan, *supra* note 135, at 8-9.

¹⁴¹ *Id.*

¹⁴² Flick Asvat, *supra* note 130.

¹⁴³ Bugrado Business Plan, *supra* note 135, at 4-5.

¹⁴⁴ *Id.* at 3.

¹⁴⁵ *See id.* at 4-5. I acknowledge the societal and cultural differences in the United States. and South Africa are such that economic self-sufficiency through youth entrepreneurship may have a greater impact in South Africa than in the United States; however, training in economic literacy is a critical aspect of basic education in any culture.

¹⁴⁶ Interview with Flick Asvat, Bugrado Edutrade Founder (Nov. 15, 2001).

¹⁴⁷ *Id.*

America's Children Still at Risk¹⁴⁸ explores in-depth the role of lawyers in assisting youth; education in economic literacy should be seen as part of the transition from childhood to adulthood. If community organizing, leadership development, and other training in the arts of democracy¹⁴⁹ are to become an integral part of a community's fabric, it must start with our youth.

F. Economic Culture, Social Capital, Assets, and Race: A Critical Juncture in America

The benefits of asset accumulation are missing from the lives of poor and minority people.¹⁵⁰ While CED often focuses on developing affordable housing, the focus of this Article is on opportunities for economic self-sufficiency. As Mary Nelson of Bethel New Life Church, a highly regarded Christian Community Development Association in Chicago observed, “[w]e started in housing, but what we found is that even the most affordable housing is not affordable without jobs.”¹⁵¹

The economic boom of the last decade did not trickle down to the masses of poor people. The gap between the haves and the have-nots is wider than ever. There is a need to emphasize the importance of economic culture and social capital within minority communities. The “term economic culture focuses on behavioral patterns and belief systems that are ultimately concerned with the production and distribution of wealth.”¹⁵² Social capital is a quality created between people; it refers to opportunity and the relationship between a person's location in the social structure of a market or hierarchy. It is further defined as “resources which one acquires through kinship networks, peers, members of one's own family or community.”¹⁵³ Human capital is the quality of individuals; social capital is the contextual complement to human capital.¹⁵⁴

Assets not only improve economic stability, they connect people with hope for the future, enable people to focus and specialize, provide a foundation for risktaking, enhance the welfare of offspring, and have personal, social, and political dividends.¹⁵⁵ Given these benefits, the CED agenda must find ways to increase asset accumulation.

¹⁴⁸ ABA Steering Committee on the Unmet Legal Needs of Children, *America's Children Still at Risk* (2001).

¹⁴⁹ See Bennett, *supra* note 126.

¹⁵⁰ Regina Austin, *Nest Eggs and Stormy Weather: Law, Culture, and Black Women's Lack of Wealth*, 65 U. Cin. L. Rev. 767, 769 (1997).

¹⁵¹ Randy Frame, *Helping the Poor Help Themselves*, Christianity Today, Feb. 3, 1997, at 70, 71.

¹⁵² Bessie House, *Does Economic Culture and Social Capital Matter?: An Analysis of African American Entrepreneurs in Cleveland, Ohio*, 24 W. J. of Black Stud., 183, 184 (2000); see also Michael Sherraden, *Assets and the Poor: A New American Welfare Policy* (1991).

¹⁵³ House, *supra* note 151, at 184.

¹⁵⁴ *Id.*

¹⁵⁵ Austin, *supra* note 149, at 771 (quoting Sherraden, *supra* note 151, at 148).

G. Asset Development Strategies: Individual Development Accounts

Asset accounts will likely become the primary domestic policy instrument within a few decades. The most frequently discussed reason for this change will be the coming fiscal strain in entitlements. However, it seems the more fundamental reason is that portable asset accounts may be more suited to the economy and labor market dynamics of the information technology age. In the industrial era, mass labor markets and stable employment called for categorical programs and income protection policies; in the information era, rapidly changing labor markets will require household flexibility and control over investments in family well-being.¹⁵⁶ The Assets for Independence Demonstration Program at the U.S. Department of Health and Human Services (HHS), part of the Human Services Reauthorization Act of 1998, created a five-year, \$125 million Individual Development Account (IDA) demonstration program.¹⁵⁷ IDAs, which are similar to employer-employee retirement savings accounts, are leveraged savings accounts dedicated to high-return investments in business capitalization, home ownership, or post secondary education.¹⁵⁸ The program has the potential to initiate 50,000 new IDA accounts nationally.¹⁵⁹ According to the Corporation for Enterprise Development, which aims to incorporate IDA and other asset building tools for low income people into the American policy infrastructure:

IDAs are now available in at least 250 communities throughout the United States, and upwards of 5,000 low-income individuals are saving in IDAs for long-term asset goals (primarily homeownership, microenterprise development, and postsecondary education and training.) Since 1996, 28 states have included IDAs in their state TANF plans and 27 states have passed some form of IDA legislation. At the federal level, the Assets for Independence Act of 1998 established a five-year, national IDA demonstration that is expected to reach an additional 30,000 to 40,000 working poor Americans by the year 2003.¹⁶⁰ Other asset strategies include: asset accounts as employee benefits consistent with the employer's role in pension plans; lifelong learning accounts focused on post secondary education; individual training accounts in

¹⁵⁶ Colleen Dailey & Ray Boshara, Corp. for Enter. Dev., *Achieving Economic Self-Sufficiency Through Asset Building: Opportunities for Low Income Workers 4* (2000).

¹⁵⁷ Assets for Independence Act (AFIA), Pub. L. No. 105-285, § 416, 112 Stat 2579 (1998); see Dailey & Boshara, *supra* note 155, at 3.

¹⁵⁸ Dailey & Boshara, *supra* note 155, at 2. AFIA provides competitive grants to nonprofit IDA programs. Admin. for Children & Families, U.S. Dep't of Health & Human Servs., Program Overview, <http://www.acf.dhhs.gov/programs/ocs/demo/ida/background.html>. (last visited Apr. 20, 2002) Although authorized at \$110 million over five years, it received a \$10 million dollar appropriation in 1999 and 2000. *Id.*; see also Sherraden, *supra* note 151.

¹⁵⁹ Inst. for the Pub. Good, Assets for Independence Act Signed Into Law, <http://www.publicgood.com/forpoor.html> (last visited Apr. 11, 2002).

¹⁶⁰ Dailey & Boshara, *supra* note 155, at 3.

compliance with the Workforce Investment Act (WIA) of 1998;¹⁶¹ and universal asset accounts at birth or wealth endowments started at birth.¹⁶²

Tax incentives such as the Earned Income Tax Credit¹⁶³ may also provide minor relief to poor people, but are alone insufficient. Other avenues for asset accumulation must be explored.¹⁶⁴ A primary foundation of wealth is land; accordingly, the CED agenda for affordable housing must creatively explore this option. To this end, two current issues in affordable housing deserve mention--workforce housing and opportunity-based housing.

Workforce housing is "loosely defined as housing affordable to people who earn between 80 to 120 percent of the area's median income, suitable for working families and individuals."¹⁶⁵ In some areas of Chicago, this would be housing priced from \$130,000 to \$200,000.¹⁶⁶ This niche market has been difficult to develop in spite of a demand for it.¹⁶⁷

Opportunity-based housing is a proposed model for fair housing based on the fact that housing is one component of a larger set of interrelated structures. The creation and preservation of affordable housing is connected to "high performing schools, sustaining employment, necessary transportation infrastructure, childcare, and institutions that facilitate civic and political activity." ¹⁶⁸

IV. What Must CED Lawyers Do?

As the examples throughout this Article show, we must learn, listen, watch, educate, collaborate, build resources, and identify enhanced strategic collaborations. We must also make the deals happen. As one scholar notes: "[l]egal counsel face a daunting task when asked to advise section 501(c)(3) tax-exempt entities . . . as to what economic development activity involving a for-profit entity is charitable."¹⁶⁹ Some advocates suggest that Internal Revenue

¹⁶¹ Workforce Investment Act of 1998, Pub. L. No. 105-220, 112 Stat. 939 (codified at 29 U.S.C. § § 2801-2945).

¹⁶² *Id.* at 3-4. A comprehensive explanation of these proposals is outside the scope of this Article.

¹⁶³ I.R.C. § 32.

¹⁶⁴ See Benjamin B. Quinones, *Redevelopment Redefined: Revitalizing the Central City with Resident Control*, 27 U. Mich. J.L. Reform 689 (1994).

¹⁶⁵ Urb. Land Inst., *Recommendations for Developing Workforce Housing in Hanover Park, Highland Park and Humboldt Park in the Chicago Metropolitan Area* (draft Sept. 14, 2001), http://www.growingsensibly.org/cmapdfs/HP3report_final.pdf.

¹⁶⁶ *Id.*

¹⁶⁷ *Id.*

¹⁶⁸ John Powell, *Envisioning Racially Just, Opportunity-Based Housing for the Chicago Region* (2001) (unpublished paper), available at <http://www.lcmoc.org/powelles.htm> (last visited Apr. 11, 2002).

¹⁶⁹ Gregory G. Maher, *Charitable Economic Development: It's Time the IRS Took Another Look*, 7 J. Affordable Housing & Community Dev. L. 31, 33 (1997).

Service law reforms are needed in the areas such as unrelated business income tax in order for nonprofit organizations to be engaged in successful economic development and job creation endeavors.¹⁷⁰ Lawyers have an important role to play in the transaction,¹⁷¹ and in public policies affecting CED such as smart growth and urban sprawl.¹⁷² Further, in assessing CED opportunities, the voice of the people whose lives are most keenly impacted must be heard in new ways.¹⁷³

A. Evaluation of the CED Critique

In critiquing CED, while acknowledging its role in the post civil rights agenda, Professor Audrey McFarlane cautions that the promises of economic transformation from Empowerment Zones in particular is oversold.¹⁷⁴ Economic development is not neutral policy that government can advance without addressing structural causes of poverty--racism and racial segregation. Moreover, "economic development promotes capital accumulation and mobility that intentionally bypasses poor neighborhoods."¹⁷⁵ The exception is communities close to central business districts that have gentrification potential. Comparing the history of international development with domestic CED efforts, she observes that the development discourse "embodies a 'top-down, ethnocentric, and technocratic approach.'"¹⁷⁶ Notwithstanding successes of CED projects in some neighborhoods, by focusing on "place" and "space," CED "tacitly accepts that neither poverty nor racial segregation can be eliminated."¹⁷⁷

Professor McFarlane levies three criticisms of the Empowerment Zone Program's promise of job creation through business development, skills, and job-readiness training.¹⁷⁸ First, the relationship between jobs and economic development has not been demonstrated.¹⁷⁹ Economic

¹⁷⁰ *Id.*

¹⁷¹ David Dante Troutt, *Ghettoes Made Easy: The Metamarket/Antimarket Dichotomy and the Legal Challenges of Inner-City Development*, 35 Harv. C.R.-C.L. L. Rev. 427, 504-05 (2000).

¹⁷² Salsich, *supra* note 5; John A. Powell, Achieving Racial Justice: What's Sprawl Got to Do With It?, *Poverty & Race*, Sept.-Oct. 1999, at 3 (1999); John A. Powell, How Sprawl Makes Us Poor, *Albuquerque Trib.*, Mar. 22, 2000, at C1.

¹⁷³ McFarlane, *supra* note 5, at 325-26.

¹⁷⁴ *Id.*

¹⁷⁵ *Id.* at 333.

¹⁷⁶ *Id.* at 301 (quoting Arturo Escobar, *Encountering Development: The Making and Unmaking of the Third World* 39, 44 (1995)).

¹⁷⁷ *Id.* at 308.

¹⁷⁸ *Id.* at 345.

¹⁷⁹ *Id.*

development, designed to meet the needs of the business elite by encouraging capital development, is not synonymous with employment development.¹⁸⁰ The jobs created from economic development initiatives at convention centers and sports areas are low-wage jobs insufficient to support families.¹⁸¹ The jobs produced by economic development projects usually require highly educated or skilled employees.¹⁸² Second, the focus on geographic regions reinforces and embeds the place of the “ghetto.”¹⁸³ Third, “jobs” are not the only problem faced by poor people.¹⁸⁴ Professor McFarlane calls for a critical assessment of community-based development and “re-imagining” CED in “ways that it does not currently exist today.”¹⁸⁵ She observes that there has never been a national critical analysis of CED.

I advance Professor McFarlane's premise by advocating for the “voice of the people in CED” or what I believe she calls the “lived place.”¹⁸⁶ Individuals can identify the impact of affirmative action on their personal and professional development. Also, the impact of CED on the lives of real people deserves similar review.¹⁸⁷ By listening to these voices perhaps we can begin to re-imagine. Moreover, we must study the work of innovators and social entrepreneurs such as Flick Asvat, who understand how to create sustainable and organic systems to transform communities.

The future of CED will continue to be influenced by globalization and technology. Future key themes will be asset creation and worker protection. Indeed, as I write this Article, the terrorist attacks of September 11, 2001 and the American War on Terrorism have spurred the decline of the American economy, forcing a re-evaluation of the global economy.¹⁸⁸

¹⁸⁰ *Id.*

¹⁸¹ *Id.*

¹⁸² *Id.*

¹⁸³ *Id.* at 346.

¹⁸⁴ *Id.* at 347.

¹⁸⁵ *Id.* at 353.

¹⁸⁶ *Id.* at 298.

¹⁸⁷ In thinking about this Article, I am reminded of the role of CED programs in my own life growing up on the Lower East Side of Manhattan, New York. In the early 1970s, I participated in after school programs at Henry Street Settlement in New York City, worked as a youth counselor at Manpower for Youth, and participated in programs sponsored by the Educational Alliance. I attribute my passion for the arts to the community theater I saw and my work as theater property manager at Henry Street Theater. My parents, Episcopal Church social workers, worked at Henry Street Settlement and lived on Henry Street. My mother later worked as a field worker for Mobilization for Youth. My experiences at Henry Street, Manpower for Youth, and the Educational Alliance exposed me to people, places, ideas, and opportunities that *seem* rare for low income youth in today's world. My family and I occasionally reflect on the people from our community who excelled in spite of the odds, many of whom have stories to tell about the impact of CED programs on the “lived place.” I imagine that there are many others who have similar reflections.

¹⁸⁸ *Greenspan Says Terror Attacks Damaged Economy*, Bull. Frontrunner, Oct. 18, 2001.

B. CED in Global Context

Globalization refers to the process in which capital, goods, and services move more freely within and among nations, making national boundaries more porous and potentially less relevant. Information is the capital traded in today's global market. U.S.-style globalism has favored free market capital and encouraged weakening of organized labor protections for workers, neglecting “place” based labor in America and abroad. Minorities and other marginal populations are most impacted by globalization. Re-imagining the role of public interest lawyers in general, and in particular CED lawyers, means recapturing the democratic vision of worker protection.¹⁸⁹

V. Conclusion: A Critical Role for CED Lawyers and Legal Advocates in the New Democracy

This Article discusses some of the current issues and trends that enable a “re-imagining” of public interest CED practice. CED is inherently privatized and is becoming more so with the national emphasis on economic self-sufficiency. One sector of CED, small business and microbusiness development, has been dubbed the “new public interest law.” While CED is not a panacea, some CDCs and CBOs charged with implementing CED goals are engaged in innovative and enhanced strategic collaborations to maximize their missions. Today's nonprofit CED groups are influenced by new economy principles such as social venture philanthropy, social entrepreneurship, and social purpose business. The CED field today is shaped by increased need for advanced legal services and enhanced strategic collaborations required by mature CBOs. Furthermore, as Professor Michael Diamond observes, lawyers must be aware of the social, political and economic dimensions of community revitalization because “law alone cannot eliminate the oppressive effects of poverty and discrimination.”¹⁹⁰ In addition, there is a need for assessment of the ways in which technological advances, economic self-sufficiency, and asset building strategies impact CED practice. Also critical is the study and implementation of leadership development and community organizing initiatives to foster CED goals.

Lawyers are needed to interpret the legal issues in the new philanthropy and to lobby for legislative and policy changes that support CED aims. Transactional counsel is needed in corporate, tax, contracts, and intellectual property matters such as examining joint venture relationships between nonprofit and for-profit collaborators. While advancing CED in its current form, we must also re-imagine and create what it could be.

¹⁸⁹ See John A. Powell & S.P. Udayakumar, Race, Poverty & Globalization, *Poverty & Race*, May-June 2000, at 1, 7-8.

¹⁹⁰ Diamond, *supra* note 1, at 67.